

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 706 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PARSHOTAMBHAI BHAVANBHAI PATEL

Versus

CHIMANLAL HARJIBHAI TANK

Appearance:

MR DU SHAH for Petitioner

MR AKSHAY H MEHTA for Respondent No. 1, 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 14/10/98

ORAL JUDGEMENT

This revision application under Section 29 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Bombay Rent Act') is filed against the judgement and decree dated 29.1.1998 passed by the Extra Assistant Judge, Rajkot, whereby the learned judge upheld the judgement and decree dismissing the Civil Suit No. 129 of 1984 passed by the Small

Causes Court Judge, Rajkot.

2. The petitioner plaintiff filed suit for recovery of suit premises on various grounds including default in payment of rent. It is averred in the suit that the defendant-tenant committed default in payment of rent at the rate of Rs. 15/- per month plus taxes for the period 1.8.1981 to 31.3.1984 amounting to Rs. 480/-. Thus, notice Exh. 41 under the provisions of Section 12(2) of the Bombay Rent Act was given. The tenant neither filed reply nor raised any dispute with respect to the standard rent within a period of one month. Thus, the suit was filed on 18.6.1984. Defendant No. 1 Chimanlal Harjibhai Tank filed written statement Exh. 33. Defendant No. 2 son of defendant No. 1 filed separate written statement Exh. 25. It is stated that defendant No. 2 himself claimed to be tenant and as such pleaded that notice was not given under Section 12(2) of the Bombay Rent Act to him. A plea was also raised that rent was paid upto 31.12.1983. The trial court held that defendant No. 1 Chimanlal Harjibhai Tank is tenant of the suit premises. In the written statement a plea with respect to standard rent was raised which was decided at the conclusion of the trial fixing the same at Rs. 15/- per month. The trial court held that the tenant was entitled to protection under Section 12(3)(b) of the Rent Act. In view of this, the suit was dismissed. The appellate court upheld the finding of the trial court and dismissed the appeal.

3. It is contended by Mr. Shah, learned counsel for the petitioner that both the courts below have committed manifest error in not considering that the respondent-tenant did not either before the trial court or before the appellate court deposit the entire rent due and that too regularly. It is pointed out that 5.10.1992 the date on which the issues were framed was the first date of hearing. On the said date the tenant was liable to pay rent for the period 1.8.1981 to 31.9.1990 i.e. 110 months which comes to Rs. 1650/-. However, as per the statement of the tenant Exh. 9 filed before the appellate court as well as affidavit Exh. 10 he has deposited only Rs. 1350/-. It is of course true that he has deposited a sum of Rs. 210/- on 17.9.1984 but the said amount was deposited before the first date of hearing. Therefore, the amount due was not deposited on the first date of hearing and therefore the tenant was not entitled to benefit under Section 12(3)(a) of the Bombay Rent Act. It is further contended that even at the conclusion of the trial, the entire amount was not deposited by the tenant. It is pointed out that for the

period 1.8.1981 to 15.3.1991 i.e. the date of judgement the tenant was required to pay a sum of Rs. 1740/- but the tenant had deposited only Rs. 1560/-. Thus, the rent was a short of Rs. 280/-. It is further submitted by Mr. Shah that during the pendency of appeal the tenant deposited Rs. 1350/- whereas he was required to deposit Rs. 1425/-. It is also pointed out that the petitioner did not deposit the cost of Rs. 105/- as required by Section 12(3)(b)(iii) of the Bombay Rent Act. The payment was also not made regularly. It is thus submitted by Mr. Shah that the suit was required to be decreed even on the ground of default in payment during the pendency of appeal.

4. On the other hand Mr. Akshay Mehta submitted that a dispute was raised with respect to the standard rent in the written statement which was decided at the conclusion of the trial and as such the tenant was not aware as to what exact amount he is required to pay. He has placed reliance on a decision of this court in the case of RUPABEN VS. BABUBHAI DEOJIBHAI reported in 1983(1) GLR 263 wherein it is held that the tenant must know at what rate he has to go on paying the rent and if there was on hand of the Trial court as well as the appellate court, the question of deciding what the standard rent is, the tenant can be said to be technically not able to deposit the rent fully even though he may be willing to do so. So far as calculation is concerned the learned counsel has pointed out that the tenant had deposited Rs. 1440/- and not Rs. 1560/-. It is thus submitted that at the conclusion of trial; no rent was due. So far as the question of regular payment is concerned, the same can also not be gone into for the simple reason that the standard rent was fixed at the conclusion of the trial. So far as the appeal is concerned, it is submitted by Mr. Mehta that the component of cost will not include rent due. As far as the regular payment is concerned, it is submitted that the advance rent was deposited during the pendency of the appeal.

5. I have considered the rival submissions. I do not propose to enter into the controversy as to whether the tenant was entitled to benefit of Section 12(2)(a) or (b) and also with respect to actual amount to be deposited, for the simple reason that in my view the petitioner is not entitled to benefit of Section 12(3)(b) during the pendency of the appeal. It is now well settled by the Division Bench of this court in the case of SAKARBAI DEVRAJ VS IBRAHIM reported in 35(2) GLR 1091 that the amendment omitting the word 'regularly' in

Section 12(3)(b) is not retrospective. In view of this the present case is governed by unamended provisions. During the pendency of the appeal, the tenant has made the deposits as follows:-

3.6.1992 Rs. 270/-

29.3.1994 Rs. 360/-

2.7.1994 Rs. 360/-

22.7.1994 Rs. 360/-

Rs. 1350/-

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It is evident that the rent has not been deposited regularly. It may further be noticed that as required by Section 12(3)(b)(ii) the tenant is also required to pay the cost of the suit. Admittedly the cost of Rs. 105/- has not been paid. Thus, in my view the suit deserves to be decreed on the ground of irregular payment during the pendency of the appeal as well as on the ground that cost of Rs. 105/- has not been paid. Thus, the first appellate court has committed error in giving benefit to respondent-tenant of the provision of Section 12(3)(b) of the Bombay Rent Act.

In view of the aforesaid, this Civil Revision Application is allowed and the judgement dated 29.1.1998 passed by the Extra Assistant Judge, Rajkot, and the judgement and decree dated 15.3.1991 passed by the judge Small Causes Court in Civil Suit No. 129 of 1984 are quashed and set aside. The plaintiff suit for recovery of possession is decreed. Rule made absolute to the aforesaid extent.

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